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CURRENT TOPICS

The Council of Law Reporting

WE respectfully tender our congratulations to Sir STANLEY POTT, a past President of The Law Society, on his unanimous election as Chairman of the Incorporated Council of Law Reporting in succession to Sir HERBERT CUNLIFFE, K.C., who retires from that office after twenty-five years' service. The annual report of the Council, which was recently published, pays a tribute to Sir Herbert Cunliffe's distinguished and disinterested service. The interest of solicitors in law reporting is well known and is further emphasised by the fact that the President of The Law Society is an *ex-officio* member of the Incorporated Council, and The Law Society contributes two elected members, who this year are Sir STANLEY POTT and Mr. G. D. COLCLOUGH. The annual subscription for the Law Reports, which has fluctuated between 4 and 6 guineas in the eighty-four years of the history of the Council, is to be raised to 8 guineas for 1949, owing to a trading loss of £2,958 at the end of 1947 as compared with a profit of £2,492 in 1946. This is due to a general rise in costs, particularly of printing and paper. The Council's financial reserves are substantial but it is to be hoped that the " disinflation " which we are assured is on the way will restore a proper balance to the Council's affairs as soon as possible.

Re Diplock

THE judgment of the Court of Appeal in this case is reported elsewhere in this issue (p. 409). It proved too long to be read in court, comprising as it does some sixty or seventy pages of close-typed foolscap. Mr. Justice WYNN PARRY's judgment in the court of first instance occupies sixty-five pages of the Law Reports and there is talk of a further appeal to the House of Lords. Mr. Caleb Diplock's will and questions arising out of the administration of his estate have now been before the courts on five occasions beginning with the hearing before Mr. Justice FARWELL in *Re Diplock* [1940] Ch. 988; 84 SOL. J. 524, and the effect of the recent decision of the Court of Appeal is that a number of charities, to whom legacies were mistakenly paid ten years ago, must now return their legacies to the personal representatives. Some of the charities affected would seem to have been taken over by the MINISTER OF HEALTH under the National Health Service Act, 1946, and there may still be difficult questions for decision with regard to the liability of the new authority to make these repayments.

Rent Tribunals and Conveyancing

CAREFUL conveyancers will agree with the warning given by the Chairman of the Hammersmith Rent Tribunal in a letter to *The Times* of 12th July with regard to the necessity for purchasers to inquire whether rents have been fixed by a rent tribunal. He rightly observed that purchasers are too apt to think in terms of the 1920 to 1939 Rent Acts, under which there can be great difficulty in finding out a specific standard rent. All rents fixed by rent tribunals are, however, registered, and it is a necessary precaution, as Mr. BEAUFORT-PALMER observes, to make an inquiry on the matter from the local authority. It is true that not all rents are registered and not all purchasers wish to let with furniture or services. On the other hand, the revelation in such cases as *R.* v. *Croydon and District Rent Tribunal* (1947), 91 SOL. J. 435 as to the possible scope of the rent tribunal's jurisdiction should emphasise the necessity of this inquiry in all cases except those where purchasers intend to buy exclusively for their own use or for a business use over a long period.

Resolutions of Exempt Private Companies

A POINT which is liable to be overlooked is that, although exempt private companies are, by s. 143 (4) of the Companies Act, 1948, relieved of the necessity to print copies of the resolutions referred to in that section for filing, this relief does not extend to ordinary resolutions authorising an increase of capital, where such resolutions are permitted by the articles. Where the exemption from printing does apply, the Registrar will accept a typed top copy on durable paper, duly certified by a director and the secretary that the conditions of exemption have been satisfied, in the form of the additional certificate required for the annual return (substituting " this certificate " for " this return "). If a certificate has already been given, as, for example, in an annual return, it need not accompany subsequent copy resolutions.

Leasehold Reform

THE Chartered Auctioneers' and Estate Agents' Institute, according to a memorandum recently submitted by them to the Lord Chancellor's Committee on Leasehold Tenure, are against leasehold enfranchisement, against the granting of security of tenure to business tenants, and against the " freezing " of rents of business premises. Their arguments, which are exceptionally well expressed and marshalled, are substantially similar to those set out in the memorandum submitted by the Chartered Surveyors' Institution, on which we commented in a previous topic (*ante*, p. 366). One of the most impressive of their arguments against enfranchisement is that the right to enfranchisement could hardly be granted to a weekly tenant, and " if it were provided that only tenants in occupation for a minimum term were entitled to enlarge their interests, the effect would probably be that landlords would only grant leases for less than that term." Control by

the freeholder, it is further argued, is essential to good estate management, and "valuable as an adjunct to good town planning." Against the proposal to give security of tenure to business tenants it is urged that this might well cause a reduction in the quantity of commercial property becoming available for letting. It is further argued that it is too late to "freeze" the rents of business premises, because it would penalise landlords who had been considerate. On the constructive side the Institute contend that residential tenants should be given analogous rights to claim compensation for improvements as the Landlord and Tenant Act, 1927, gives to business and professional tenants, subject to proper safeguards against unreasonable or trivial claims. Much support will also be given to the Institute's suggestion that in proper cases a new lease might be granted without the necessity of proving adherent goodwill, as at present required under the 1927 Act. This is a closely reasoned memorandum, and it will carry great weight.

The Rating of Site Values

ANOTHER recent memorandum by the Chartered Auctioneers' and Estate Agents' Institute, submitted to the Committee on the Rating of Site Values, makes the point that as a result of the Town and Country Planning Act, 1947, the strongest argument in favour of a rate on site values, namely, its effect in recovering the so-called "unearned increment" due to community efforts and expenditure, has largely lost its force. Increment which is associated with change of user, it is said, is removed by the Act. The memorandum admits that increment which arises during the continuance of the existing user is not affected by the Act, but states that such increment is not peculiar to land and the Institute sees no justification for selecting land for differential taxation. It is also pointed out that the element of site value is already taken into account in the assessment of the composite hereditament. The memorandum concludes that the Institute does not feel that a case has been made out which would justify the rating of site values.

Town and Country Planning: Advertisement Regulations

AT a press conference on 21st July the Ministry of Town and Country Planning outlined the Town and Country Planning (Control of Advertisements) Regulations, 1948 (S.I. No. 1613), which come into force on 1st August in England and Wales. Control may be exercised over all advertisements except those displayed on enclosed land, not readily visible outside that land; those within buildings, other than certain illuminated advertisements; those on vehicles in use *as* vehicles; and those on railway land visible only from railway stations. No new advertisements can be displayed after 1st August without consent; though certain classes may continue unless and until challenged by notice to apply for consent by the local authority, e.g., functional advertisements such as "Bus Stop"; those relating to land on which displayed, as a doctor's name-plate; temporary advertisements relating to land on which displayed, such as "To Let"; advertisements on business premises relating to the business or trade. Some areas of special control will be set up by local authorities where no commercial advertising will be allowed, e.g., in a truly rural area. Before these are set up, however, the Minister's approval and public inquiries are necessary. Fly-posting is made a punishable offence; and not only the person displaying the notice but also the owner of the land and those whose goods are advertised are liable to prosecution subject to a defence that it was without the knowledge or consent of such owner or trader. Advertisements in connection with travelling fairs, elections, etc., are permissible provided they are removed within seven days from the date of the fair, election, etc. The advertisement control is to be exercised by the local planning authority in the interests of amenity and public safety (with appeal to the Ministry) but imposes no censorship on content.

Local Authorities' Land Transactions

LOCAL authorities in England and Wales have recently received from the Minister of Health copies of a Treasury Memorandum summarising the effect of the Town and Country Planning Act, 1947, on their transactions in land. A covering circular (Ministry of Health Circular No. 129/48, dated 30th June) emphasises how important it is that local authorities should take care not to pay more than the "restricted" or "existing use" value of land, except in certain special cases listed in the circular, and summarises the circumstances in which local authorities may claim compensation from central funds under Pt. VI of the Act and those in which they will be liable to a development charge under Pt. VII. The basis on which local authorities should transfer or dispose of land is set out in the circular.

Coroners' Emoluments

A QUESTION of public interest is raised by the adoption on 1st July by the Hull City Council of a resolution instructing the finance committee to examine the conditions of the appointment of the city coroner and the expense incurred by the corporation in reference to his office and the receipt and retention of fees paid to him. The mover of the resolution said that from time to time, solicitors, witnesses and insurance companies applied for particulars from the coroner's office, which were supplied at a certain fee. The coroner claimed to be entitled by statute to retain those fees. The cost of the coroner's office to the corporation for the year was £4,230. Coroners, many of whom are solicitors, are chosen from among the most respected members of their profession. They will be the first to agree that their honourable office, to adapt a well-known phrase, should not only not be subject to any "racket," but should not seem to be so subject. Town clerks now surrender to local authorities the premiums they receive from articled clerks, and if coroners' salaries are sufficient, they should be willing to surrender any extra perquisites of office.

Recent Decisions

In the House of Lords (LORD PORTER, LORD SIMONDS and LORD NORMAND, LORD SIMON and LORD OAKSEY dissenting), on 14th July (*The Times*, 15th July), it was held that the legal and accountancy costs of a successful appeal to the Board of Referees against a decision of the Commissioners of Inland Revenue under s. 32 of the Finance Act, 1940, with a view to reducing an assessment to excess profits tax could not be deducted as a disbursement "wholly and exclusively laid out or expended for the purposes of the trade."

In *Carroll* v. *Andrew Barclay and Sons, Ltd.*, on 14th July (*The Times*, 15th July), the House of Lords (the LORD CHANCELLOR, LORD PORTER, LORD DU PARCQ, LORD NORMAND and LORD MORTON OF HENRYTON) held that the provision with regard to fencing of transmission machinery in s. 13 (1) of the Factories Act, 1937, like the rest of the provisions as to fencing in ss. 12 to 16 inclusive of the Act, was provided for the protection of the workman against coming into contact with any part of the machinery, and not to protect him against breakage of the machinery, or against, as in this case, the breaking of a moving belt which was part of the transmission machinery so that it struck the plaintiff. His action, therefore, based on breach of statutory duty, failed.

SINGLETON, J., on 14th July (*The Times*, 15th July), held that for the purposes of excess profits tax a firm carrying on business as surveyors, estate agents, auctioneers and valuers were only partly carrying on business of a professional nature, and that their non-professional activities were therefore subject to excess profits tax.

In the Court of Appeal (SCOTT and ASQUITH, L.JJ., and ROMER, J.), on 16th July (*The Times*, 17th July), it was held that the Territorial and Auxiliary Forces Association, being a direct emanation from the Crown, its function being to help to raise a territorial army for His Majesty, was entitled both as landlord and as tenant to exemption from the Rent Restrictions Acts, 1920 to 1939.

BOOKS IN COURT: SOME RANDOM REFLECTIONS

WHEN Sir Edward Fry, then a Chancery Judge, put before the profession in 1881 the second edition of the treatise on Specific Performance which he had written twenty-three years earlier, he thought it necessary to preface himself as follows: "There is one notion often expressed with regard to works written or revised by authors on the Bench, which seems to me in part at least erroneous—the notion, I mean, that they possess a quasi-judicial authority. It is hardly enough remembered how different are the circumstances under which a book is written and a judgment pronounced, or how much the weight and value of the latter are due to the discussions at the Bar which precede the judgment." Though this may at first appear mere elegantly expressed modesty, the reason given is sound beyond denial, and is indeed at the root of our system of judicial precedent. Kekewich, J., quoted this passage and commended the reason in *Union Bank, Ltd.* v. *Munster* (1887), 37 Ch. D. 54, and went on to remark that some judges forbade altogether the citation of *living* authors. We may note at the outset that Sir Edward Fry's words were not directed to any distinction between living authors and those who were deceased. Nevertheless such a distinction is to be discerned again and again in comparatively modern cases.

In 1913, for instance, we find no less a campaigner than Sir Edward Clarke, K.C., sustaining at the hands of Vaughan Williams, L.J., this rebuke: "No doubt, Mr. Odger's book [on libel] is a most admirable work, which we all use, but I think we ought in this court still to maintain the old idea that counsel are not entitled to quote living authors as authorities for the proposition they are putting forward, but they may adopt the author's statements as part of their argument" (*Greenlands* v. *Wilmshurst and Others* (1913), 29 T.L.R., at p. 687). Nor, apparently, was the rule binding only on counsel. The judges of the Court of Appeal, even in the throes of construing the 1925 property legislation, then highly novel, reminded themselves of it when counsel pressed them with a note explanatory of the section with which they were concerned appearing in the current edition of Wolstenholme and Cherry's Conveyancing Statutes (*Re Ryder & Steadman's Contract* [1927] 2 Ch. 62). Sargant, L.J., was a member of the court in that case, and he could have drawn on his own experience for an example of the traditionally correct use of a textbook, for in *Re McEuen* [1913] 2 Ch. 704, as a judge of first instance, he had in so many words adopted as his own some observations from Master Chandler's book on Trust Accounts. Lord Porter also followed out the formula with exactitude when he clinched a piece of reasoning with a passage beginning: "As Mr. Konstam says in the latest (1943) edition of his book on the Income Tax Acts . . ." (*Absalom* v. *Talbot* [1944] A.C. 204). In practice the knack of using the correct form of words, and it is surely nothing more, is quickly acquired by the advocate.

At first blush it might seem that a distinction between living and deceased text writers is an easy one to draw and certain of application. But it is well to remember that reputable textbooks are constantly being revised after their author's death, not always in such a way as to leave the original text identifiable without research. Halsbury, too, presents a problem of its own, for its titles are contributed from various sources, and it would surely be too extravagant a fiction to attribute every statement even in the original edition to the first editor-in-chief.

In any case, the distinction is too arbitrary to be consistent with an ordered system of jurisprudence. Plainly the quality of a man's work undergoes no change on his death. It has, indeed, now been boldly stated (by Denning, J., in a review of Professor Winfield's "A Textbook of the Law of Tort," 63 L.Q.R. 516) that the notion that the works of academic lawyers are not of authority except after the author's death has long since been exploded. The explosion evidently took place at some time subsequent to 1932, for in that year Lord Buckmaster stood firmly by the old distinction (*Donoghue* v. *Stevenson* [1932] A.C., at p. 567).

What criterion, then, ought we to apply in appraising the practical value of a textbook, be the author living or dead, as a tool of the advocate's trade? Simply, it is submitted, the quality of the book and the reputation of the author, together with the degree of conviction carried by the reasoning which leads to the relevant proposition. But statements in textbooks do not in themselves *bind* a judge, apart perhaps from some ancient works, of which the latest is said to be Foster's Crown Law, which carry some authority (see Pollock, First Book of Jurisprudence, 6th ed., pp. 250 and 319). The established works on conveyancing again are in a slightly different category, for the settled practice of conveyancers is a part of the common law (*Re Ford & Hill* (1879), 10 Ch.D., at p. 370), though in *Mason* v. *Ogden* [1903] A.C. 1 Lord Halsbury would have had no hesitation in upsetting that practice had such a course been necessary.

A footnote on p. 233 of the ninth edition of Salmond on Jurisprudence says that a persuasive efficacy, similar in kind to that accorded to judicial *dicta* but much less in degree, is ascribed to English and American textbooks "of the better sort." The word "efficacy" in this note is obviously chosen by Salmond in avoidance of the word "authority." He explains that a persuasive precedent is "one which the judges are under no obligation to follow, but which they will take into consideration and to which they will attach such weight as it seems to them to deserve. It depends for its influence on its own merits, not upon any legal claim which it has to recognition."

Examples are not lacking of cases in which the judges have referred in their judgments to modern textbooks. A conspicuous recent instance is the judgment of Hallett, J., in *Dennant* v. *Skinner* [1948] 2 All E.R., where, at p. 33, he compares differing statements on the same topic in the seventeenth edition (1929) and the nineteenth edition (1945) of Anson on Contract, and states a preference for one view, thereby investing that statement with a higher forensic value than it could have possessed in its own right. If the judge is to take notice of a text writer's views, then clearly counsel may present them in argument, observing due form. There seems nothing to fetter the discretion and taste of the presiding judge in this matter.

It is pertinent to observe, moreover, that to quote from a textbook is not necessarily to rely on its writer's views as authority for a novel proposition. It has never been suggested that a textbook may not be cited for a convenient statement of some general legal principle of common acceptance. Especially must this be so in practice in county courts and before other tribunals where too strict an insistence on the use of original authorities would involve undue cartage of heavy books. Even in the High Court Lord Westbury might be prayed in aid. For when, as Lord Chancellor, he introduced in the Lords the Bill which was to become the Statute Law Revision Act, 1863, he took the opportunity of animadverting at some length on the origins and the current sources of the law. Lord Westbury told his audience that Sugden on Vendor and Purchaser (the author of which was, by the way, then still living) was accepted by the courts as a code or digest of the decisions on the subject, the writer having expunged from the mass of reported material what he considered bad, and retained what was good (Hansard, vol. 171, 3rd series, col. 775).

Another matter connected with law books which was also touched upon by Lord Westbury in the same speech concerns the citing of reports of decided cases. Halsbury (vol. 2, p. 503) quotes from the speech the statement that "as soon as a report is published of any case, with the name of a barrister annexed to it, the report is accredited, and may be cited as an authority before any tribunal." Other writers (e.g., Sir Frederick Pollock in First Book of Jurisprudence, 6th edition, p. 312) refer in addition to a requirement that the barrister who signs the report must have been present at the decision; but it may be doubted whether this condition is any longer vital, particularly in these days of official shorthand

notes. Reference to Hansard, *ubi supra*, seems to show that Lord Westbury was rather bemoaning what he considered an undesirable feature of contemporary legal practice than laying down any settled rule. In fact the acceptance of a report has never been automatic. *Stare decisis* is not the same as *stare scriptis*. We are told that particular judges of the past would not accept the work of particular reporters whom, doubtless, they had found to be unreliable. Thus Lord Kenyon objected to Keble, and Lord Mansfield to Atkyns. Even to-day it is not unknown for a judge to criticise a report or to supplement it with a recollection of his own or with information obtained from the record of the case.

Again, a decision may be cited notwithstanding that it is not to be found in any published report. Warrington, J., presented in *Renshaw* v. *Dixon* [1911] W.N. 40 with a short-hand transcript, apparently unsigned, of a judgment delivered in 1838 by Denman, L.C.J., drew attention to the fact that the technical rules of admissibility of evidence had no application. Being informed that the report had come from among the papers of one of the parties to the original action, he said he proposed to do what any ordinary person would do and treat the document as an accurate report.

The usual unofficial series of reports are, of course, frequently quoted when a case has not been covered by the Law Reports, and Lord Esher, M.R., once swept aside counsel's apology with the words: " We have said that we will accept *The Times* Law Reports because they are reports by barristers who put their names to the reports " (*West Derby Poor Law Guardians* v. *Atcham Guardians* (1889), 6 T.L.R. 5). But the official report should be cited if there is one (Practice Note [1931] W.N. 121).

It would, indeed, be improper to suppress a reference to an authority merely because it had not been officially reported. Lord Birkenhead in *Glebe Sugar Refining Co., Ltd.* v. *Trustees of Port and Harbours of Greenock* (1921), 37 T.L.R. 436, thought it right to observe that it was not possible in a case of any complication for the House of Lords to be aware of all relevant authorities. The House was in the hands of counsel and those instructing counsel, and expected and indeed insisted that authorities which bore one way or the other should be brought to its attention as part of the obligation of confidence between the House and those who assisted in the capacity of counsel. A note of a case, though signed by a barrister, must be distinguished from a report. Such notes are often a condensed form of report, and figure in the tables of cases prefaced to textbooks. Those in THE SOLICITORS' JOURNAL and other professional periodicals have been cited in court without objection, particularly on points of practice, as in *Walker* v. *Dodds* (1888), 37 Ch. D. 188. In *Goodman* v. *Moses* (1900), 69 L.J.Q.B. 823, an unsigned comment in 43 SOL. J., at p. 600, was apparently treated as a report of a decision of the Court of Appeal which the court in the later case followed. It is always open to a party to cite an unreported or an imperfectly reported case by reference to the original record, which may be called for by the court or bespoken by the party from the archives of the Public Records Office, though the record is unlikely to contain a transcript of the spoken judgment. Where speeches in the House of Lords have been printed copies of them are sometimes furnished to a court before which the case is subsequently cited (see *Macaulay* v. *O'Donnell* (1933), referred to in *Re Price* [1943] 2 All E.R. 505). The citation of a note which the court is not satisfied is sufficiently explicit may lead to the publication of a full report (usually unsigned) in the Law Reports (e.g., *Barham* v. *Huntingfield* [1913] 2 K.B. 200).

Two somewhat unorthodox reports appeared recently in the same part of the All England Reports (17th April, 1948), where a case of exceptional interest heard at the Sussex Winter Assizes is reported unsigned on material supplied by counsel (*Hastings and Folkestone Glassworks* v. *Kalsen*, p. 711), and a report of a chamber summons on a question of administration procedure appears above the initials of a barrister " by leave of the judge on a note prepared by Master Mosse and approved by his lordship " (*Re Viscount Rothermere, deceased*, p. 709).

Curiously enough the Weekly Notes, a publication of the Incorporated Council of Law Reporting, which also publishes the official series of reports, at one time came in for repeated rejection by the courts. In *Barter* v. *Dubeux* (1881), 7 Q.B.D. 414, Bramwell, L.J., quotes the Lord Chancellor as stating that the Weekly Notes could only be cited as a guide to discovering what had taken place in the courts. For what other purpose, it may be asked, is any report cited? Presumably Lord Selborne meant as a guide to practice, for Lindley, L.J., writing in the *Law Quarterly Review* for 1885, said that the Weekly Notes was the best place for practice cases except such as were of unusual value.

Even on points of practice, judges have refused to accept Weekly Notes, signed though they are by barristers (see, e.g., the interjection of Cotton, L.J., in *Pooley's Trustee* v. *Whetham* (1886), 33 Ch. D., at p. 77); but the remark of Swinfen Eady, J., in *Re Smith's Settlement* [1903] 1 Ch., at p. 375, is probably more typical of the later attitude: " Except on points of practice the Weekly Notes should only be cited as interim reports of cases during the period required for their publication in the Law Reports." Does this not, however, blink the difficulty that some cases originally noted are not at the time of publication intended to achieve a complete report? Such cases are usually distinguished by an asterisk placed by the title in the modern numbers of the series. They are not confined to practice points (e.g., *Re Backhouse* [1931] W.N. 168). On the other hand, in *Paine* v. *Countess of Warwick* [1914] 2 K.B. 486, Pickford, J., followed a decision on the construction of a will which had been reported only in Weekly Notes, though counsel had urged that it should be treated with suspicion on that account.

Both the use of textbooks and the citation of reports appear to be matters peculiarly within the province of the tribunal itself. Perhaps the best advice on either subject that can be offered to an advocate is " Know your judge."

J.F.J.

ADOPTION OF CHILDREN

BEFORE 1927, English law did not recognise adoption; it was not possible for parents to transfer to any other person the rights, duties and liabilities of parenthood and although *de facto* adoptions were not uncommon, the natural parents of a child who had been thus " adopted " could always recover the child if they so desired. Consequently, kind-hearted people who would otherwise have been eager and willing to take a child and bring it up as their own hesitated to do so for fear that, after they had lavishly expended their affection and money upon it, the natural parents might claim its return and thus deprive them of the child they had come to love and regard as their own.

However, a complete transfer of the rights, duties and liabilities of parenthood from the natural parents to the " adopters " is now possible by reason of the Adoption of Children Act, 1926; references in this article to sections of an Act of Parliament refer, unless otherwise stated, to that Act.

An adoption order can only be made in favour of an applicant resident in England or Wales and domiciled there or in Scotland; and in respect of an infant who is a British subject and resident in England or Wales (s. 2 (5)).

A person desirous of adopting an infant can apply to the court for an adoption order (s. 1); such an order can be made by the High Court, or by any county court or court of summary jurisdiction for the place where either the applicant or the infant resides (s. 8 (1)). Applications to a court of summary jurisdiction are by far the most common, and are dealt with in the juvenile court (Adoption of Children (Summary Jurisdiction) Rules, 1936, r. 2). All applications are heard *in camera*.

An adoption order may be made jointly to two spouses, but apart from this cannot be made to more than one

person (s. 1). The adopters must be at least twenty-five years of age, and at least twenty-one years older than the infant, except that the former requirement does not apply to an adoption by the infant's mother, and the latter requirement does not apply if the applicant and the infant are within the prohibited degrees of consanguinity, or where the mother or putative father is applying for an order jointly with his or her spouse (s. 2 (1)). Further, a male may not adopt a female unless the court is satisfied that there are exceptional circumstances justifying an order (s. 2 (2)).

Consent to the making of an adoption order is required from all persons who are parents or guardians, or who have the actual custody of the infant, or who are liable to contribute to its support (s. 2 (3)). The putative father of an illegitimate child is not a " parent," but if a bastardy order has been made against him or if he has agreed to support the child, or admitted liability to do so, he is a person " liable to contribute," and as such his consent is required. Similarly, the husband of the mother of an illegitimate child against whom an order for the support of the child has been made under the Poor Law Act, 1930, s. 14, is a person liable to contribute to the support of the child. In practice most courts insist on the consent of the husband of the mother being obtained in all cases.

The court has, however, power to dispense with the consent of any person other than the husband or wife of the applicant who (*a*) has abandoned or deserted the infant, or (*b*) cannot be found, or (*c*) is incapable of giving consent, or (*d*) being a person liable to contribute to the support of the infant, has persistently neglected or refused to contribute to such support, or (*e*) is a person whose consent ought in all the circumstances to be dispensed with (proviso to s. 3 (3)). It was at one time thought that (*e*), *supra*, only applied to a person liable to contribute to the support of the infant, but it was held in *Harris* v. *Hawkins* [1947] 1 All E.R. 312; 111 J.P. 160; 213 L.T. 131, that these words in the proviso to s. 2 (3) confer upon the court a wide power to dispense with the consent of any person in a proper case.

One of two spouses cannot obtain an adoption order without the consent of the other, though the court may dispense with such consent if the other spouse cannot be found, or is incapable of giving consent, or if the spouses have separated and are living apart and are likely to remain permanently separated (s. 2 (4)).

All consents must be in writing, and must relate to the proposed adoption by the particular adopter; it is not sufficient for a person whose consent is required to sign a form in blank, or relating to adoption in general (*Re Carroll* [1931] 1 K.B. 329; 95 J.P. 25).

Before making an adoption order, the court must be satisfied that all necessary consents (except such as the court may dispense with) have been given, that the consenting persons understand the effect of the order, that the order will be for the welfare of the infant, and that no payment has been made or promised to the adopters (s. 3). If the court for any reason considers it desirable to postpone a final decision, there is power to make an interim order for not exceeding two years, and to impose conditions as to supervision and generally in the meanwhile, but this power is subject to the same requirement with regard to consents as in the case of an adoption order (s. 6).

The court is required to appoint a guardian *ad litem*, whose special duty is to safeguard the interests of the infant, to make full investigation into the circumstances of the infant, the proposed adopters, and all other relevant matters, and to report to the court thereon; he is also required to verify so far as possible the contents of the petition or application (s. 8 (3)). In practice it is usual for the local authority or probation officer attached to the court to be appointed guardian *ad litem*.

An adoption order does not deprive the child of any interest in property to which he would have been entitled but for the order, nor confer on him any such interest as a child of the adopter (s. 5 (2)); consequently, when an adopter wishes his adopted child to succeed to an interest in his property on his death, it is essential that he should make provision accordingly by will or settlement, as the adopted child will not inherit under the laws of intestacy. It is good practice for the court to explain this position to the adopters when making an adoption order.

No body of persons may arrange for a child to be adopted unless it is registered as an adopton society or is a local authority (Adoption of Children (Regulation) Act, 1939). This restriction, however, does not prohibit a person desirous of adopting a child from negotiating the matter direct with the parents of the child, subject, of course, to obtaining an adoption order from the court.

When a person receives a child from a registered adoption society he must keep the child for three months before applying for an adoption order. If at the end of that time he wishes to adopt the child, he must within a further period of three months apply for an adoption order; in the meanwhile the society may reclaim the child, or the person who received the child may return it to the society if he wishes. If the court refuses to make an adoption order, the child must be returned to the society within seven days (Adoption of Children (Regulation) Act, 1939, s. 6). This Act also contains provisions as to the supervision of the child, prohibiting payments in respect of adoptions except with leave of the court, sending children for adoption abroad, and certain other matters.

The procedure for applying for an adoption order in the High Court is by originating summons in the Chancery Division to a judge in chambers (Adoption of Children (High Court) Rules, 1926); in the county court application is made by petition (Adoption of Children (County Court) Rules, 1926); and in the magistrates' court by a written statement in prescribed form (Adoption of Children (Summary Jurisdiction) Rules, 1936). In the county court, and in courts of summary jurisdiction, the duties of the guardian *ad litem* are further elaborated by these rules respectively.

The applicant, the infant, and all respondents must normally attend the hearing of the petition or application, but the rules contain a power to dispense with such personal attendance in certain cases. In normal practice in courts of summary jurisdiction the personal attendance of a respondent is frequently dispensed with if the written consent of that respondent is produced, and purports to be verified by a declaration made before and signed by a justice of the peace; the applicants must always attend in the magistrates' court, though where two spouses are jointly applying the attendance of one of them may be dispensed with if his or her application is verified as described above; see r. 8 of the Adoption of Children (Summary Jurisdiction) Rules, 1936.

In most cases it is desired that the infant shall take the surname of the adopter, and as this is the only surname appearing in the adopted children register, no difficulty arises. It is common practice for the Christian names of the infant also to be altered in the adoption order, although it is doubtful whether in strict law there is any power to substitute a new name.

Adoption orders are registered at Somerset House. Since 15th December, 1947, a shortened form of birth certificate has been brought into use which reveals neither adoption nor illegitimacy, and this form may conveniently be used in most cases where the production of a birth certificate is required, thus avoiding the shock of discovery of adoption to an infant who has been brought up to believe that he is the natural child of his so-called parents.

In conclusion, the practice followed by the county courts and courts of summary jurisdiction in adoption proceedings varies very considerably within the framework of the Act and the relevant rules, and in awkward or unusual cases it is a wise precaution to enlist the assistance of the registrar or the clerk to the justices before proceeding with the petition or application.

E. G. B. T.

Divorce Law and Practice

NEW AMENDING RULES AND SOME RECENT PRACTICE POINTS

Matrimonial Causes Amendment Rules, 1948

By the Matrimonial Causes Amendment Rules, 1948, a number of important alterations are made to the Matrimonial Causes Rules, 1947, which have already been amended twice by the Matrimonial Causes Amendment Rules, 1947, and by the Matrimonial Causes Amendment (No. 2) Rules, 1947. Of the new amendments the most important for practical purposes is the expansion of the definition of an " undefended cause " given in r. 1 (3) of the 1947 rules. This paragraph, which has previously been amended by the first of the amendments made in 1947, has now been altered so that the definition of undefended cause does not now include a cause in which a co-respondent, party cited or person named denies a charge of adultery without filing an answer. This applies whether or not such person is made a respondent to the cause. Thus it is that the definition of an undefended cause as it now stands in the rules is any matrimonial cause in which no answer has been filed or in which all the answers filed have been struck out ; but it does not include—

(*a*) A cause in which relief is sought under s. 176 (*d*) of the Supreme Court of Judicature (Consolidation) Act, 1925, or s. 7 (1) (*b*) of the Matrimonial Causes Act, 1937.

(*b*) A cause in which a co-respondent claims to be heard as to damages without filing an answer (this amendment was made by the Matrimonial Causes Amendment Rules, 1947).

(*c*) A cause in which a co-respondent, party cited or person named whether made a respondent or not denies a charge of adultery without filing an answer.

In order to give effect to this alteration of the definition of an undefended cause a number of alterations became necessary to the rules relating to answers and the various forms in App. II to the 1947 rules, which concern co-respondents, parties cited and persons named. Rule 16 of the original rules which dealt with the filing of answers now provides that it is not necessary for a co-respondent or person named to file an answer if the memorandum of appearance indicates an intention to deny a charge of adultery but not to defend the petition on any other ground. This necessarily involved an alteration in the skeleton of form 7 in App. II, which is a memorandum of appearance by a co-respondent, party cited or person named; this alteration is provided by the amendments and the form now enables such a person to say whether he or she wishes to deny the adultery with which he or she is charged independently of any other answer he or she may wish to put forward.

Rule 17, which deals with the evidence required in support of an answer and the service of the answer, has in a similar way been modified by the addition of a sub-para. 4 (*a*), which provides that a party cited or person named need not file an answer if the memorandum of appearance indicates an intention to deny a charge of adultery but not to defend the cause on any other ground. Likewise, it was necessary to amend r. 20, which is concerned with pleadings which are out of time, so as to provide that a co-respondent, party cited or person named, whether made a respondent to the cause or not, shall not, except by leave, be heard to deny any charge of adultery unless he or she has entered an appearance before the registrar grants his certificate.

Apart from the amendments summarised above, resulting from the modified definition of an undefended cause, the remaining amendments to the 1947 rules are mostly of comparatively minor importance, but notwithstanding that it is as well that they should be pointed out, for some, at any rate, involve alterations in the documents that it is necessary to serve on various parties at different stages of matrimonial proceedings.

Rule 24, which deals with the appointment of medical inspectors in proceedings for nullity on the ground of impotence or incapacity of the respondent, has been modified so as to provide that it is now the responsibility of the registrar when the application is made to decide whether the appointment of medical inspectors is necessary in the particular case. Previously the registrar had no option in the matter and was bound to appoint one, or if he saw fit two, inspectors whenever the application was made to him.

In the case of a person applying for leave to present a petition for divorce before three years have elapsed since the date of the marriage it is now necessary to include in the affidavit in support of such an application a statement as to whether or not there has been a previous application to present a petition before the lapse of the necessary three years. This is provided by an amendment to r. 2 (2).

The procedure to be adopted when a person is charged with adultery or sodomy, but is not made a respondent in the cause, has been modified and it is now provided by r. 15 (1) that in such a case, in addition to a copy of the petition and a notice in accordance with form 13, it is necessary to serve on such a person a form of acknowledgment of service in accordance with form 4—which has itself been modified—and two copies of a memorandum of appearance in accordance with form 7, which has also, as mentioned above, been redrafted.

For the purpose of applying for the registrar's certificate under r. 30, an undefended cause includes causes in which relief is sought under s. 176 (*d*) of the Supreme Court of Judicature (Consolidation) Act, 1925, or under s. 7 (1) (*b*) of the Matrimonial Causes Act, 1937 ; this change is brought about by an amendment to r. 30 (3).

The above notes give a brief outline of the principal changes that these amendments have brought about; there are a number of other amendments of a trivial nature and it is not necessary to detail them here.

Practice points

While dealing with matters of practice in divorce, it is perhaps worth drawing the attention of readers to two points upon which official pronouncements have recently been made. The first point is of particular importance to magistrates' clerks. In *Danall* v. *Danall* [1948] W.N. 194, which was an appeal to the Divisional Court and which was out of time, the delay was explained by one party as being due, in part, to the failure of the magistrates' clerk to provide the appellants' solicitors with the reasons for the magistrates' decision at the original hearing. When asked for the reasons the clerk said that the magistrates had given no reasons for the decision. Lord Merriman, P., dealing with this point, commented strongly on such action on the part of the clerk to the magistrates and said: " It is the duty of the clerk, if he does not record at the time the magistrates' reasons for his decision, to obtain a statement of those reasons after the event. Magistrates are not bound to give their reasons in open court at the time of giving a decision; nevertheless, they are bound to have reasons for the judgments which they give, and it is a convenient practice that they should record the reasons at the time . . ."

The obvious moral for magistrates' clerks is that if the magistrates fail to give reasons at the time of their judgment then they should be approached at the earliest possible moment after the case to record the reasons before the reasons themselves disappear into the limbo of forgotten things.

A practice note issued by the Senior Registrar deals with the case when an order for maintenance is embodied in a decree *nisi* to take effect when such decree becomes absolute. In such a case the registrar will, on the decree becoming absolute, endorse on the decree *nisi*, and sign, a note that it has been made absolute on a certain day. In order to make the order for maintenance effective a copy of the decree *nisi* with such note endorsed should be served upon the party who is ordered to pay, or his solicitors. P. W. M.

A Conveyancer's Diary

LAW OF PROPERTY ACT, 1925, SECTION 28

THE question whether trustees for sale of land are authorised to invest the proceeds of sale in the purchase of other land depends largely on the construction of s. 28 of the Law of Property Act, 1925. This problem was touched on, but not fully considered, in *Re Wakeman* [1945] Ch. 177, but it arose immediately in the recent case of *Re Wellsted* [1948] W.N. 270. In *Re Wakeman* a trust corporation was directed to hold the residue of an estate upon the usual trusts for sale and conversion. The residue included some realty, but this was sold and the proceeds invested in accordance with the directions contained in the will. At a subsequent date the trustee corporation took out a summons to determine whether it was at liberty to invest the proceeds of sale of the land which had been sold in the purchase of land. Section 205 (1) (xxix) defines the expression " trustees for sale " as " persons . . . holding land on trust for sale," and Uthwatt, J. (as he then was), decided the question in the negative, on the short ground that a trustee who had held land on trust for sale, but did so no longer, was not a " person holding land on trust for sale " within the meaning of s. 205, and so could not properly exercise any of the powers conferred upon trustees for sale by s. 28. This decision went against the current of opinion held among conveyancers at the time, and was widely criticised. Section 205 provides that the meaning thereby assigned to certain expressions may be displaced by a context, and it was felt that such a context could be found in the circumstances which arose in *Re Wakeman;* the trustee corporation there was still a trustee for sale, in that it held personalty on trust for sale at the date of the summons, although it had disposed of the realty. However that may be, the decision has stood; and now that almost exactly the same point has been adjudicated upon on a wider ground, it may have lost much of its importance.

Section 28 (1), so far as material, provides as follows :—

> Trustees for sale shall, in relation to land . . . and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925, including in relation to land the powers of management conferred by that Act during a minority . . . and (subject to any express trust to the contrary) all capital moneys arising under the said powers shall, unless paid or applied for any purpose authorised by the Settled Land Act, 1925, be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

In *Re Wellsted* the circumstances were similar to those in the earlier case, with the single material exception that the residuary estate comprised a considerable quantity of land, part of which the trustees (who held on trust for sale) had sold, but the greater part of which they had retained unsold. The question raised was again the same, viz., whether the moneys arising on the sale of the land already sold could properly be invested by the trustees, under the powers conferred by s. 28, in the purchase of other land; and this question was answered in the negative.

Vaisey, J., first pointed out that the opening words of s. 28 (1), which confer the powers of a tenant for life on trustees for sale, were not qualified in any way, e.g., by the words " subject to any express trust to the contrary " which appear later in the subsection, or by any similar words. In his view the consequence was that this provision, if it in fact authorised the purchase of land with the proceeds of the sale of land, could override the express directions of a testator, e.g., a direction to sell land and to invest the proceeds solely in Government securities. This observation is just, but with all respect I do not think much turns on this point. There are a number of statutory provisions which override the express directions of testators. A testator is not, for example, permitted to appoint an infant as his trustee; nor can a sole trustee be effectively appointed if the trust is a trust for sale of land (I have seen a will which appointed " my son J to be trustee hereof while he lives, and I do not wish any other trustee to be appointed to meddle in the affairs of this trust "; a very human desire, but one which was frustrated when J wanted to sell some of the realty). If the Legislature intended that trustees for sale should have certain powers, the desires of individual testators could not be permitted to stand in the way.

But this is by the way, and the real ground for decision in *Re Wellsted* was much more substantial. Vaisey, J., considered that, in general, the powers referred to in s. 28 (1) were all those powers contained in Pt. II of the Settled Land Act, 1925, and that these powers were conferred upon trustees in order that they might be exercised in relation to land. Part II of that Act is headed " Powers of a Tenant for Life," and it comprises ss. 38 to 72. Section 73, which deals with the investment of capital money and which authorises the investment of capital money in, *inter alia*, the purchase of land, is the first section of Pt. III of the Act, which is headed " Investment or other Application of Capital Money." The powers referred to in s. 28 (1) are, therefore, the powers of a tenant for life specifically so called in the Settled Land Act, and do not extend to any provision of that Act outside Pt. II, e.g., to those portions of the Act which deal with the investment of capital money. On this footing the proceeds of sale of land could not be invested in the purchase of land, although they could properly be applied for any Settled Land Act purpose. Such purposes would, apparently, include the purchase of land if it were required, not as an investment, but for the protection or improvement of land retained unsold.

It may be argued that this decision gives no due effect to that part of s. 28 (1) which confers the powers of a tenant for life on trustees for sale, not only in relation to land, but also in relation to the proceeds of sale, and that the subsection would on this construction operate in much the same way if the latter words were omitted. This would not, on further consideration, appear to be the case. The powers of a tenant for life, as specified in Pt. II of the Settled Land Act, extend to a number of matters which may involve the outlay of money, e.g., an exchange of land with the concomitant possibility of the payment of equality money. A trustee holding mixed realty and personalty on trust for sale, with a direction to invest the proceeds of sale in trustee securities, would not normally be at liberty to raise money for the purpose of making an equality payment by the realisation of part of the personalty; but if he has in his hands the proceeds of sale of land, such proceeds could be applied for this purpose. The words " in relation to the proceeds of sale " in s. 28 (1) are not, therefore, otiose.

It is a real convenience to have a reasoned interpretation of s. 28 (1), which, owing to the peculiar circumstances in *Re Wakeman*, did not emerge from the earlier decision. It would be going too far to say that *Re Wellsted* will be welcomed in all quarters at a time when trustees are often urged to invest in the purchase of land, but that is neither here nor there where the question which had to be decided was the place which s. 28 (1) is to occupy in relation to the scheme of the 1925 legislation as a whole. It is not difficult to confer upon trustees power to invest in land, and this decision, by making it clear that such a power will not be introduced by a side wind, underlines the necessity of expressing the exact powers of investment with precision in the instrument itself.

" A B C "

Landlord and Tenant Notebook

NOTICES TO QUIT AGRICULTURAL HOLDINGS

A " question in the House " on the above subject, and the answer it produced, which were reported in our issue of 10th July (92 SOL. J. 379), do not give a very complete picture of the situation adverted to. The question was concerned with, and the questioner (Sir E. Graham-Little) about, an observation made by Harman, J., in the course of his judgment in *Re Kendrick's Agreement, Colwill* v. *Barrington* (1948), 92 SOL. J. 361 : " The same position arose under s. 31 of the Agriculture Act, 1947, and tenants were now at the mercy of the Minister and not under the old rule of law." The member for London University inquired whether the Minister of Agriculture would introduce amending legislation so as to preserve the rights of the subject ; the answer given, after stating that the judicial observation had been taken out of its context, explained that the decision related solely to notices to quit agricultural holdings, that the learned judge was " simply pointing out that under Def. Reg. 62 (4A) or under the Agriculture Act, 1947, a notice to quit given by a landlord may be unenforceable without my [the Minister's] consent. Where the 1947 Act applies, s. 31 gives clear directions as to the giving or withholding of consent."

It may be that this answer itself requires a little interpretation, and I think that what the Minister meant to stress was not the distinction between notices to quit agricultural holdings and notices to quit other premises (which the questioner had recognised) but the distinction between safeguards afforded in the case of the regulation and safeguards afforded in the case of the statute. Harman, J., had no occasion to refer to this latter distinction. In both cases the Minister has a say ; but in the case of the statute those concerned may have a say as well.

Regulation 62 (4A) avoids any notice to quit given to a tenant of an agricultural holding after a sale or agreement to sell the holding made since 3rd September, 1939, " provided that this paragraph shall not apply to any notice if (whether before or after the giving thereof) the Minister of Agriculture and Fisheries consents in writing thereto." It was held in *Irving* v. *Patterson* [1943] Ch. 180, that the Minister is not bound to hear objections, or even to notify the tenant if he does consent. The Ministry issued a notice on 1st December, 1942, announcing that thenceforth applications made more than a month after service of the notice to quit would be entertained in exceptional circumstances only. In *Re Kendrick's Agreement* a purchasing landlord had served notice to quit on 13th March, 1947, to expire on Lady Day, 1948 ; whether or not he applied for consent before or after (and if after, how long after), the departmental decision giving consent was promulgated on 25th October, 1947, leaving the tenants five months in which to make their arrangements. The point raised was that this made the notice short and therefore bad ; the learned judge held that the difficulties arose from the regulation, not from the notice ; the question was not one of curing a bad notice, and the proviso to the regulation was perfectly general. It was then that the allusion to s. 31 of the Agriculture Act was made, comparing without contrasting the two positions ; for, indeed, the occasion did not, as I suggested above, call for detailed examination of the two positions.

But if s. 31 gives clear directions, where the 1947 Act applies, as to the giving or withholding of consent, the fact remains that even a landlord who has not purchased since 3rd September, 1939, is no longer in a position to give notice to quit merely at the price of compensation for disturbance without further ado. In those cases in which the tenant has no right to such compensation (bad husbandry, etc., set out in s. 30 (1)) a notice to quit cannot be challenged by applying to the Minister, nor can this happen when the land is required for non-agricultural purposes and town-and-country-planning permission has been obtained (s. 31 (2) (*b*) and (*c*)). (The reason must be stated in the notice.) In other cases either the Minister must consent to the operation of the notice to quit before it is given (s. 31 (2) (*a*)) or the tenant may serve a counter-notice which will prevent the notice to quit from taking effect unless the Minister consents to its operation (s. 31 (1)). But it is here that the " directions as to the giving or withholding of consent " mentioned in the answer in Parliament come in. Representations may be made to the Minister (s. 31 (4)), who is to withhold consent unless satisfied of certain facts (desirable in the interests of efficient farming, for agricultural research, etc. : s. 31 (3)), and, while there may normally be no way of impugning a ministerial decision after representations have been heard, in this case the Act gives a dissatisfied party a right of appeal or, as it is called, a right to have the matter referred to the Agricultural Land Tribunal (s. 31 (6) : as to procedure, see 92 SOL. J. 177).

There is a further contrast : the tenants in *Re Kendrick's Agreement*, it will be remembered, complained that the result left them only five months' residue. Section 31 (8) (*c*) and (*d*) of the Agriculture Act, 1947, authorises the Minister to make regulations for suspending the operation of notices to quit until the termination of any reference to the tribunal and for postponing the date at which a tenancy is to be terminated by a notice to quit which has effect in consequence of such reference. The Agriculture (Control of Notices to Quit) Regulations, 1948, which came into force with the part of the Act concerned on 1st March last, provide for postponement, by the tribunal, by not more than twelve months if the reference terminates within six months before the expiry date of the notice to quit " whether or not on an application in writing in that behalf made to them by the tenant within one month from the termination of the reference " (para. 8). The date of this termination is the date on which the final determination is forwarded to the tenant (para. 10 (2) (*b*)).

As the question put in the House referred to " the common law," which the learned judge, it was said, had described as having been replaced by the Minister, it is of interest to recall that while nothing can be done if a reference under the Act terminates more than six months before the expiry date, that was in fact the minimum length of notice in the case of a yearly tenancy at common law, whether the property was a farm or not.

The provisions restricting the right to terminate a tenancy do indeed, it so happens, contain more safeguards protecting the rights of the subject than do many other provisions of the Agriculture Act, 1947, such as the large number which enjoin the Minister to consider representations but give no right to have his decision reviewed. But if anyone who feels strongly about those rights would like to have his attention drawn to a case in which a plea for " amending legislation " could be put more strongly, he might consider the right of the Minister (without even entertaining representations) to " designate " as agricultural land land which in his opinion ought to be brought into use for agriculture (s. 109 (1)) : a legal result of the operating of this provision, coupled with that of the definition of "holding" in Sched. VII, para. 18, might indeed be such as to put parties " at the mercy of the Minister and not under the old rule of law," as Harman, J., put it. R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

JOHN Philpot Curran was born at Newmarket in County Cork on 24th July, 1750. His father, who was seneschal of the manor-court there, belonged to what one may call the upper rank of the peasantry ; his mother was somewhat better connected. The resident clergyman, appreciating his promising capabilities, gave him personal tuition in the rudiments of classical learning, and himself provided for the expenses of sending him to Trinity College, Dublin. He was at first destined for the Church, but in the course of his studies he determined to try his fortune at the

Bar. He had only himself to rely on, for he afterwards said: "The only inheritance that I could boast of from my poor father was the very scanty one of an unattractive face and person like his own; and if the world has ever attributed to me something more valuable than face or person or than earthly wealth, it was that another and dearer parent gave her child a portion from the treasure of her mind." His mother never reconciled herself to her son's career and even when he was a judge would say: "Don't speak to me of judges, John was fit for anything and had he but followed our advice, it might hereafter be written upon my tomb that I died the mother of a bishop." Curran was early troubled by a stammer which even his best friends believed would confine him to chamber practice, but this he overcame, becoming the foremost orator at the Irish Bar, to which he was called in 1775, flourishing in one of the most troubled periods of his country's history. He became Master of the Rolls in Ireland in 1806.

TO BET OR NOT TO BET

It seems that recently Mr. Herbert Malone, K.C., sitting at Clerkenwell, admitted that he knew little about bookmakers or racing, but added that he was once "up" on the winner when he rode in a race. That was while he was a gunnery officer in France in the first World War, and the occasion was a battery horse race. Mrs. Malone, it is reported, confirmed his ignorance of bookmaking: "Like most people, he puts an occasional half-crown on a big race but he really knows nothing about it." This degree of innocence is hardly a necessary legal characteristic. There is a good story told of Sir Charles Russell, the future Chief Justice, when he was at the Bar. He was appearing for the Reverend Newman Hall, who was suing his wife for divorce. In an impassioned appeal, he described his client as a man of deep piety whose thoughts were constantly on celestial objects. Just at that moment a telegram was handed to Russell, who opened it, read the message and then swore to himself in tones which could be heard all over the court. The anti-climax produced a burst of laughter. What had happened was that he thought he had £25 on a winner at 66 to 1, but the telegram had informed him that he was not on. Far other was the attitude of the venerable Lord Craigmyle. A guest of the Inner Temple Benchers, who sat next to him at dinner in Hall once got a shock. In the course of conversation, he mentioned that he had been racing that day and started some story about the ill-luck of the horse he had backed when Lord Craigmyle suddenly burst out with intense passion, "Tear that evil thing up by the roots! Stamp upon it! Fear it like the plague! Cast it away!" He left the other wondering what personal experience could have made him so vehement.

LORD RUSSELL ON THE TURF

As for horses, it is not necessary to be a betting man in order to be a riding man, but the Pegasus Club has fostered both. Lord Russell, who stood at the head of the original members, was certainly both: "On the Turf, as everywhere else, his personality was felt. A member of that exclusive institution, the New Rooms at Newmarket, it may safely be said that any trainers, jockeys or bookmakers whom Russell did not know were not worth knowing and he was very popular with them all. His knowledge of form was encyclopaedic. 'When,' said a friend, 'we used to go out on the Heath at Newmarket to see the morning trials and gallops, which we did every day before breakfast, Russell would become instantly the centre of an admiring and miscellaneous group of the followers of racing—trainers, newspaper-men and touts, and sometimes even owners.'" He had an "extraordinary observation of the shape and movements of a horse" and while at Newmarket he loved to rise at cockcrow for a canter over the Heath. Few lawyers can have equalled him as a sportsman but, on the whole, the profession would seem to lean rather to Russell than Craigmyle.

REVIEWS

Probate and Divorce Handbook. By D. Perronet Rees, District Probate Registrar, Birmingham. Second Edition. 1948. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

There is always a demand for handbooks on all branches of the law, and this little volume is one of the most compendious on the market. The author requires little introduction, for his former position as principal clerk of the Divorce Registry and part author of "Latey on Divorce," and his present position as registrar of such an important probate registry as Birmingham are sufficient recommendations. It is evident throughout the book that it is the work of a practical man.

It is not intended to be an exhaustive work, but it lives up to its claim to be a handy book of reference in dealing with the ordinary type of case. In dealing with cases outside the ordinary rut of work in a solicitor's office, reference will, of course, have to be made to one of the more comprehensive works on probate and divorce.

It being the function of a critic to criticise, mention must be made of a few of what can be considered regrettable omissions. In the section devoted to probate matters, no mention is made of the valuable services rendered by the district registries in the settlement of draft papers. This service is not so well known as it should be. Likewise, the manner of payment of fees in the principal and the district registries could be more fully dealt with. There is often confusion in the minds of practitioners as to this. In the paragraphs dealing with resealings in Northern Ireland, a note to the effect that the jurats of all affidavits to be filed in the Irish courts must show that the deponent is known to the commissioner for oaths, and that when bond must be given, it should be given to the Lord Chief Justice of Northern Ireland by name, would be of the greatest practical value.

In the divorce section, no mention is made of the decision in *Cohen* v. *Cohen* [1947] 2 All E.R. 69, which considerably clarifies the position regarding non-cohabitation clauses. In dealing with the question of jurisdiction in suits for nullity of marriage, the case of *de Reneville* [1947] 2 All E.R. 112 seems to have been ignored. As both these cases were reported before the date of the Preface, it is curious that they should not have been referred to.

Despite these criticisms, the book can be recommended to the busy solicitor. It is most informative, and the number of forms and the precedents for the taxation of costs in divorce are invaluable. Much use has been made of tabulated statements and reference to them will give complete accuracy in the drafting of papers.

The Law of Bills of Exchange. By Francis C. Coningsby, LL.B., of the Middle Temple, Barrister-at-Law. 1947. London: Stevens & Sons, Ltd. 12s. 6d. net.

A Simple Guide to Negotiable Instruments and the Bills of Exchange Acts. By Dudley Richardson, Associate of the Institute of Bankers. 1947. London: Butterworth and Co. (Publishers), Ltd. 12s. 6d. net.

Both these little books are for students, and each deals with the same subject on lines which are substantially similar, yet each has its distinct sphere of usefulness. Mr. Richardson addresses himself to banking students generally, while Mr. Coningsby, though not closing the door on the lay pupil, incorporates in his treatment features which will most readily appeal to the law student—more references to decided cases, for instance, though these are appropriately fewer than in practitioners' books. Each is excellent in its way, and if Mr. Coningsby's tabulations of distinctions seem particularly helpful to the legal student, Mr. Richardson can match them with diagrams equally vivid and possibly more quickly grasped by the general commercial man.

The plan in each case involves setting out the sections of the Bills of Exchange Act with annotations and comment—surely the only satisfactory way of presenting such a perfectly codified branch of the law. In addition each book contains introductory chapters setting the scene for the Act itself, again in a manner wholly suited in each case to the particular audience envisaged by the author.

The Legal Aspects of Business. By H. R. Light, B.Sc. (Lond.), F.C.I.S. 1948. London: Sir Isaac Pitman & Sons, Ltd. 8s. 6d. net.

Under this somewhat equivocal title there comes, not a business book for lawyers, but an excellent and circumstantial summary of legal principles and the English legal system calculated to give those engaged in business a sound knowledge of its legal aspects. The author also hopes, with justification, that the book will be useful to those who wish for a general introduction to commercial law for professional examinations, particularly of a banking, accountancy or commercial nature. But here is one lawyer who has read the book right through with interest. The ample references to cases and quotations from the reports typify an approach which is refreshing after the amateurish paraphrases

sometimes put before the lay reader in order, ostensibly, not to embarrass him with technicalities. The language of our judges will bear reading by anyone who understands and loves the English tongue. The author's own literary style is interesting, and it would be difficult to find a more lucid exposition of many well-known legal enigmas.

Considering the scope of the book and its concern with generalities, such blemishes as we noticed are quite trivial. The binding effect of a decision of the Court of Appeal is not quite accurately stated on p. 6, and the author's enthusiasm has led him into an exposition of the detail of the early steps in the institution of proceedings which is perhaps unnecessarily intricate for those to whom the book is addressed. There are obvious slips on pp. 28, 48, 51 and 175.

Human nature being as it is, it may be doubted whether such a book will materially reduce the volume of litigation, but a solicitor may well find it easier to deal with clients who have read Mr. Light's work and have digested the principles he explains.

The Law of Savings Banks. By JOHN Y. WATT, late of the National Debt Office and the Ministry of Health. Third Edition. 1948. London: Butterworth & Co. (Publishers), Ltd. 2 Vols. 63s. net.

This well-known work of over forty years' standing now appears in two volumes of a handy size and exceptionally clearly printed. The new arrangement has much to commend it, for while vol. 1 contains the author's statement of the law and practice relating to the Trustee and Post Office Savings Banks, Government Annuities and Savings Certificates, including cases and awards of the Registrar of Friendly Societies (who has an almost exclusive jurisdiction on questions arising between the banks and various interested parties), vol. 2 sets out the text of the many Acts and regulations which appertain. By this means the work acquires a unique usefulness for the student and for the bank official and his advisers. Besides these specialists, however, others may wish to refer to these books, for they set forth a statutory code applicable to a particular type of personal property which has become increasingly important under modern conditions.

NOTES OF CASES

HOUSE OF LORDS

INCOME TAX: TRANSFER OF ASSETS TO COMPANIES ABROAD

Congreve *v.* Inland Revenue Commissioners

Viscount Simon, Lord Porter, Lord Simonds, Lord Normand and Lord Oaksey. 13th May, 1948

Appeal from the Court of Appeal.

The appellant taxpayers were assessed to income tax and surtax on income payable to companies resident outside the United Kingdom but deemed under s. 18 of the Finance Act, 1936 (as amended by s. 28 (3) of the Finance Act, 1938), to be income of the taxpayers. The second appellant, the wife of the first, had acquired rights by virtue of which she had, within the meaning of that section, power to enjoy the income payable to the companies in question. The Court of Appeal, reversing Wrottesley, J., who had discharged the assessments, affirmed them. The taxpayers appealed. The House took time for consideration.

LORD SIMONDS, in whose opinion the other noble lords concurred, said that s. 18 (1) spoke of "the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue . . . whereof . . . income becomes payable to persons resident . . . out of the United Kingdom . . . " It was not necessary that the avoidance by the taxpayers of liability to tax should be achieved by means of transfers of assets effected by them themselves. The appellants, therefore, did not escape tax because the transfers in question had been effected by other persons. It was also not necessary that the transfer of assets should be to a person resident in the United Kingdom at the time of the transfer. It was sufficient, to bring s. 18 into operation, that the companies to which assets had been transferred should, as here, afterwards have become resident outside the United Kingdom. The assessments must stand. Appeal dismissed.

APPEARANCES: *Tucker*, K.C., and *Heyworth Talbot* (*Slaughter and May*); *Sir Frank Soskice*, K.C. (*S.-G.*), *J. H. Stamp* and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

PURCHASE TAX: PRODUCTION OF DOCUMENTS

Customs and Excise Commissioners *v.* Ingram and Others

Lord Goddard, C.J., Tucker and Evershed, L.JJ. 4th May, 1948

Appeals from Denning, J., in Chambers.

The Commissioners took out summonses under s. 14 of the Crown Proceedings Act, 1947, asking for orders to the defendants to produce in pursuance of s. 20 of the Finance Act, 1946, "all their books, accounts, records and documents in connection with any business carried on by them at" certain addresses, in connection with purchase-tax matters. By s. 14 of the Act of 1947 ". . . the Crown may apply in a summary manner to the High Court . . . (*d*) for delivery of any accounts, the production of any books, or the furnishing of any information, required . . . under the enactments relating to purchase tax." Denning, J., affirming the Master, made the order, and the defendants appealed.

LORD GODDARD, C.J.—TUCKER and EVERSHED, L.JJ., concurring—said that if the Commissioners resorted to the summary methods made available to them by s. 14 (2) the court must not go beyond the powers given to it. Denning, J., was entitled to order production of books and accounts, and "accounts" must include invoices, whether sales invoices or purchase invoices. The subsection did not, however, give power to order production of records and documents, and those words must be expunged from Denning, J.'s order. The limitation was not applicable here that the court would not order production of documents which might incriminate the subject. No new principle of law was involved: it was a commonplace of legislation designed to protect the revenue of the Crown to oblige a man to do certain things which might have the effect of incriminating him. The claim for privilege which might succeed as between subject and subject in an action had no application to this class of discovery and production. Order varied.

APPEARANCES: *Gallop*, K.C., and *A. L. Gordon* (*Albin Hunt and Stein*); *Gallop*, K.C., and *Gillis* (*B. A. Perkoff & Co.*); *H. L. Parker* (*Solicitor of Customs and Excise*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: CLAIM FOR NEW LEASE

Rackett *v.* Aston & Co., Ltd., and Another

Scott and Asquith, L.JJ., and Jenkins, J. 10th May, 1948

Appeal from Worthing County Court.

The plaintiff was the tenant of premises at which he carried on business. The defendants, his landlords, were lessees of the premises from the freeholder. The tenant's lease was due to expire a day before the head lease in May, 1949. On 10th May, 1946, the tenant gave notice to the mesne landlords claiming a new lease under s. 5 of the Landlord and Tenant Act, 1927, alternatively, compensation under s. 4 for loss of goodwill. The claim was communicated to the head landlord, who, on the 18th July, 1946, offered the tenant a new lease from himself in lieu of compensation. By proviso (*b*) to s. 4 (1) the tenant is disentitled from compensation if within two months of his claim for it "the landlord serves on the tenant notice that he is willing . . . to grant the tenant" a new lease of the premises. The tenant is deemed to have declined the offer if he does not accept within a month. The county court judge dismissed the application for a new lease. The tenant appealed.

SCOTT, L.J., said that it was argued that, the right to compensation being a condition precedent to the right to a new lease, the tenant's rejection of the offer of 18th July deprived him of the right to compensation and, consequently, of the right to a new lease. The notice referred to in proviso (*b*) was, however, a notice by the tenant's immediate landlord. Section 8 showed that the Act was aimed primarily at the relationship of landlord and tenant between each couple in a chain of tenancies. The tenant here had not had the offer of a new lease within two months from his own notice on 10th May. Proviso (*b*) therefore had no application. The case must go back for determination of the claim to a new lease. Appeal allowed.

ASQUITH, L.J., and JENKINS, J., agreed.

APPEARANCES: *L. A. Blundell* and *Curtis-Raleigh* (*Petch and Co.*, for *Bowles and Stevens*, Worthing); *Anthony Harmsworth* (*Carter & Barber* for *V. H. O. Jackson*, Littlehampton).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LETTING AT UNECONOMIC RENT: STANDARD RENT

Insall *v.* Nottingham Corporation

Tucker, Somervell and Cohen, L.JJ.

18th June, 1948

Appeal from Nottingham County Court.

The appellant was the tenant at £120 a year of part of Newstead Abbey, of which the respondents, Nottingham Corporation, were the freeholders. The premises were within the Rent Restrictions Acts by virtue of the Rent and Mortgage Interest Restrictions Act, 1939. In 1938, one German and his wife had sold the abbey and certain other property to the corporation. It was agreed during the negotiations for the sale that the Germans should be granted a tenancy of part of the abbey at £50 a year rent for so long as they or the survivor of them should wish to live there. In a letter covering a cheque on completion of the sale the town clerk stated that he understood that German had agreed to continue to manage the property on behalf of the corporation. German replied that he was willing to look after the property. The tenancy agreement between the corporation and the Germans contained no reference to the services which German had agreed to perform. The appellant tenant applied to the county court under s. 11 of the Rent and Mortgage Interest Restrictions Act, 1923, to fix the standard rent, contending that the house was let at £50 a year to the Germans on 1st September, 1939, and that that was the standard rent. The county court judge held that as £50 a year was not an economic rent he was entitled, on the authority of *Roberts* v. *Jones* [1947] 1 K.B. 221; 91 SOL. J. 27, to disregard it, and he accordingly fixed the standard rent at £120 a year. The tenant appealed.

TUCKER, L.J.—SOMERVELL and COHEN, L.JJ., agreeing—said that on the evidence there was no contractual obligation on German to manage the property on behalf of the corporation. The relevant rent, therefore, was £50 a year as fixed by the tenancy agreement. Assuming that the £50 a year was not an economic rent but a preferential rent granted to German because the corporation desired his services and to have him in occupation of the property, that was not a factor which the county court judge was entitled to take into account. That was shown by *Davies* v. *Warwick* [1943] K.B. 329, and *Chamberlain* v. *Farr* (1942), 112 L.J.K.B. 206. *Roberts* v. *Jones, supra*, relied on for the corporation, was clearly distinguishable. The standard rent was £50 a year. Appeal allowed.

APPEARANCES: *L. A. Blundell* (*Torr & Co.*, for *Harrop, White, Gamble & Vallance*, Mansfield); *Heathcote-Williams* (*Sharpe, Pritchard & Co.*, for *A. J. G. Hardwicke*, Nottingham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTIONS: STANDARD RENT

Langford Property Co., Ltd. *v.* Sommerfeld

Tucker and Somervell, L.JJ., and Harman, J. 22nd June, 1948

Appeal from Croydon County Court.

By an agreement in writing dated 8th March, 1944, the plaintiff landlords let to the defendant tenant a flat which had been reconstructed after its destruction by an enemy bomb in 1940. The letting was from 25th March, 1944, at a rent of £120 a year for the first two years and £160 a year thereafter. The landlords, when sending the agreement to the tenant, wrote that, as he required possession of the flat as soon as possible, he might take it from 1st March, "the rent to start from that day." The tenant was asked to sign and return the agreement, with £8 for rent from 1st to 24th March inclusive, which worked out at some £116 a year, and he duly did so. The landlords brought this action for arrears of rent, but the tenant contended that the standard rent was £116, as the first letting of the flat after 1939 was, he said, that from 1st to 24th March, 1944. The county court judge gave judgment for the sum claimed. The tenant appealed.

TUCKER, L.J.,—SOMERVELL, L.J., and HARMAN, J., agreeing—said that there was ample evidence to support the judge's conclusion that the reconstructed flat was not the same one as had existed before 1940. As for the tenant's second point, the result of the correspondence, coupled with the agreement sent to the tenant and returned by him signed, was merely to take the first £120 a year back from 24th to 1st March. That meant that there was a progressive rent of £120 a year for the first two years and twenty-four days, and £160 a year for the third year. The sentence "the rent to start from that day" clearly referred to the rent reserved by the tenancy agreement enclosed with the letter. The tenant could derive no support for his case from the fact that, by a miscalculation, rent had been mentioned for the twenty-four days at a rate slightly lower than £120 a year. The first letting after 1st September, 1939, was accordingly the letting at the progressive rent rising to £160 a year, and if that were so, it was conceded, the standard rent was £160 a year. Appeal dismissed.

APPEARANCES: *Maules* (*Copley, Singleton and Billson*); *Beney*, K.C., and *Heathcote-Williams* (*Stikeman & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: CLAIM FOR COMPENSATION OR NEW LEASE

Ireland *v.* Taylor and Another

Tucker, Somervell and Cohen, L.JJ. 13th July, 1948

Appeal from Wandsworth County Court.

The sub-tenant of a house used it for the business of a residential home for infirm old ladies, though there was a covenant in the head lease restricting the use of the house to the purposes of a private dwelling-house. The home was recommended by the doctors in the district. The appellants, the mesne landlords wished to regain possession of the house at the termination of the sub-tenancy because the first appellant wished to resume his profession as a portrait painter, for which the house was particularly suitable. As the end of the tenancy approached, the sub-tenant served notice on the mesne landlords claiming compensation for loss of goodwill under s. 4 of the Landlord and Tenant Act, 1927, and an order for the grant of a new lease under s. 5. The county court judge found the claim to compensation, as assessed by the referee, established, and made an order for the granting of a new lease. The mesne landlords appealed. (*Cur. adv. vult.*)

TUCKER, L.J., reading his judgment, said that s. 11 provided for compensation for adherent goodwill as a result of which the premises "could be let" at a higher rent. Those words covered all such persons as might in fact be in a position to let at the end of the tenancy, whether the mesne landlords or the head landlords (if the lease expired one day after the sub-lease). The tenant was not to be deprived of compensation for goodwill because the head landlords did not wish to make use of it and could by forfeiture prevent the mesne landlords from doing so. Compensation was, therefore, payable. The county court judge had, however, erred with regard to s. 5 (3) (*b*), whereby the grant of a new lease was not reasonable if the landlord proved that the premises were "required" for occupation by himself. If the first appellant genuinely desired possession for the reason which he had given, he required the house and so satisfied s. 5 (3) (*b*). It was not for the county court judge to interpose his own judgment as to the landlord's requirements. The landlord was the sole arbiter in that matter provided that he proved that he wanted possession and genuinely intended to occupy. The order for a new lease would accordingly be replaced by an order for payment of compensation as assessed. Appeal allowed in part.

SOMERVELL and COHEN, L.JJ., agreed.

APPEARANCES: *Havers*, K.C., and *Hawser* (*Dixon, Ward, Umney & Burdon*); *Avgherinos* (*N. A. Woodiwiss & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT TRIBUNALS: REDUCTION OF RENT BELOW STANDARD RENT

R. *v.* Paddington and St. Marylebone Rent Tribunal and Others *ex parte* Bedrock Investments, Ltd.

Scott and Asquith, L.JJ., and Romer, J. 16th July, 1948

Appeal from the Divisional Court (91 SOL. J. 310).

The respondent company applied to the court for an order of *certiorari* to have removed into the King's Bench Division, for the purpose of their being quashed, decisions of the appellant tribunal whereby, on references to them by various tenants of flats in Craven Hill Gardens, London, W., they reduced the rents of those flats. One of the grounds of application in each case was that the flats were within the Rent Restrictions Acts, that the rent which the tribunal had in each case purported to reduce was the standard rent under those Acts, which it was not competent for them to do by reason of s. 7 of the Furnished Houses (Rent Control) Act, 1946. By that section "Sections 9 and 10 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (which relate respectively to limitation on rent of houses let furnished and to penalty for excessive charges for furnished lettings), shall not apply as regards the rent charged for any house . . . entered in the register under . . . this Act in respect of any period subsequent to such registration, but save as aforesaid nothing in this Act shall affect any provisions of the" Rent Restrictions Acts. The Divisional Court quashed the decisions, and the tribunal now appealed. (*Cur. adv. vult.*)

ROMER, J., reading the judgment of the court, said that, while reduction of the rent below the standard rent could not be

said to be depriving the landlord of a rent to which he had a statutory right, nevertheless such a reduction did "affect" the Rent Acts within the meaning of s. 7 of the Act of 1946, for it interfered with their provisions for the fixing, apportionment and increase of standard rent. Appeal dismissed.

APPEARANCES: *Sir Hartley Shawcross*, K.C. (*A.-G.*), and *H. L. Parker* (*The Solicitor, Ministry of Health*); *Paull*, K.C., *Percy Lamb* and *D. Purcell* (*Thompson & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ADMINISTRATION: MONEY WRONGLY DISTRIBUTED TO CHARITIES: RIGHT OF NEXT-OF-KIN TO RECOVER

***In re* Diplock; Diplock *v.* Wintle (and consolidated actions)**

Lord Greene, M.R., Wrottesley and Evershed, L.JJ.
9th July, 1948

Appeal from a decision of Wynn Parry, J. ([1947] 1 Ch. 716; 91 SOL. J. 248).

The testator, who died in 1936, by his will directed his executors to divide his residue between such "charitable institutions or other charitable or benevolent objects" as they shall think fit. During 1936, 1937 and 1938 the executors distributed £203,067 between 139 properly designated charitable institutions. In September, 1939, certain next-of-kin challenged the validity of the gift and the executors on 18th October, 1939, warned all the recipients accordingly. It was held by the House of Lords in *Chichester* (*etc.*) v. *Simpson* [1944] A.C. 341; 88 SOL. J. 246, that the gift of residue was void for uncertainty. The plaintiffs, who were the next-of-kin and the judicial trustees of the will, started some 120 actions to recover the moneys paid to the charities. In April, 1944, the court made an order approving the compromise of the plaintiffs' claims against the executors, without prejudice to the claims of the plaintiffs against the charities. Wynn Parry, J., heard together nineteen actions which were typical of the various classes of claim.

In all cases the distribution had been made by cheque, accompanied by a letter which stated that the testator had bequeathed his residue amongst such institutions "or other charitable and benevolent objects" as his executors might select. In the majority of cases the cheques were paid into the institutions' current account, which was in some cases overdrawn and in others in credit. In some cases the cheque was paid into a separate account. In a few cases the executors made a condition that the money should be applied to a specified purpose. The plaintiffs claimed a declaration that the institutions were liable to refund to the judicial trustee the sums paid, or alternatively a declaration that they were entitled to a charge on any assets which included any part of the residue. It was conceded that the plaintiffs could not claim at first instance that the defendant institutions took with notice, or that they were express trustees.

Wynn Parry, J., dealt with the various contentions as follows: (1) Plaintiffs could not succeed at common law *in personam* for money had and received, as the money had been paid out under a mistake of law and not of fact. (2) A wrongful payment by executors, when the recipient was not an express trustee, did not give rise to an equitable claim *in personam*. (3) The common-law right *in rem* of following an asset applied only in the cases where a defendant had not mixed the money with its own; in such cases the plaintiff could follow the money into the account and into any asset wholly purchased with it. (4) The equitable right *in rem* of tracing into a mixed mass depended on a fiduciary relationship between the parties. There being no such relationship, the right to trace had been lost.

The plaintiffs appealed.

THE COURT handed down a written judgment, dealing with the contentions of the parties under the following heads:—

(1) EQUITABLE CLAIM *in personam*, that terms of executors' letters accompanying the payment of cheques constituted the recipients constructive trustees. It was conceded that recipients were such as from the date of the warning letter of October, 1939. But the institutions had originally received the legacies in all good faith, and were entitled to assume that the executors were correctly administering the estate. This claim failed.

(2) EQUITABLE CLAIM *in personam*, that in the events which had happened plaintiffs had a direct claim to recover sums improperly paid. The court below, to which no case earlier than *Gillespie* v. *Alexander* (1827), 3 Russ. 130, had been cited, had rejected this claim on the ground that the authorities indicated that it rested on the same basis as the common-law action for money had and received, and that accordingly it was defeated by a payment under a mistake of law. It was plain that the money was paid under a mistake of law, but the grounds of claim were basically different from the common law, under which such an action must be brought by the payer. The executors were not agents for the appellants, who were not involved in their mistake of law. Nevertheless the claim must be founded on authority, and a new equity could not be invented to satisfy "justice." This foundation could be discovered in the old cases. It was said in Roper on Legacies (4th ed., 1847; vol. I, ch. 7, sec. 3) that an unpaid legatee could claim against a paid legatee where the executor was insolvent, if the assets were originally deficient to satisfy all, as the payment by the executor was a *devastavit*. A line of cases from *Noel* v. *Robinson* (1686), 1 Vern. 90 (citing former cases from 1669 onwards) to *Walcott* v. *Hall* (1788), 2 Bro. C.C. 305, established the propositions (*a*) that there was no basis for the contention that the conscience of the defendant must be affected; (*b*) or that the mistake must have been one of fact; and (*c*) that it appeared that the equitable cause of action arose from the aim of the Chancery Court to supersede the spiritual court and render unnecessary the giving of security by a first paid legatee. Turning to the cases after 1800 cited below, in *David* v. *Frowd* (1833), 1 My. & K. 200, Sir John Leach, M.R., decided that the true next-of-kin was not precluded from making a claim by reason of an administration decree, and the defendants (persons previously wrongfully decided to be next-of-kin) must refund all that they had received. That case had never been doubted. In *Mohan* v. *Broughton* [1900] P. 56, the Court of Appeal held that an administration (by a court order) which had wrongly distributed the assets could be revoked in pursuance of the equitable claim under consideration. Lastly, in *In re Rivers* [1920] 1 Ch. 320, Eve, J., exercised the equitable jurisdiction in question to order an overpaid beneficiary to refund to an underpaid beneficiary the overpaid balance. After a full consideration of the authorities cited both below and for the first time on appeal, the following conclusions could be drawn: (1) the equity might be available equally to an unpaid creditor, legatee, or next-of-kin; (2) a claim by a next-of-kin would not be defeated merely by (*a*) absence of administration by the court, (*b*) wrongful payment under mistake of law, or (*c*) the fact that the original recipient had no title, though the refund would dispossess him entirely and not produce equality between him and the claimants. But in the case of an unpaid beneficiary there was one important qualification: as the original blunder was that of the executors, the right of the beneficiary was against them primarily, and the remedy against those wrongly paid beneficiaries was limited to the amount not recoverable from the executors (*Orr* v. *Kaines* (1750), 2 Ves. Sen. 194; Roper on Legacies, *supra*). Accordingly, the sums recoverable from the 139 charities must be abated rateably by the sum recovered from the executors under the compromise. Interest on such sums would not be payable (*Gittins* v. *Steele* (1818), 1 Swan. 199; Roper on Legacies (*supra*), p. 461).

(3) DEFENCE OF LIMITATION, which was not dealt with below, upon the view there taken. The relevant dates were: death of testator, 23rd March, 1936; wrongful payments, 1936 to 1938; main action, 3rd January, 1940; remaining actions, 22nd March, 1945; earliest date from which time would run (knowledge of testator's death by beneficiaries), early in 1945 in one case, and less than six years before 22nd March, 1939, in other cases. The only statute directly applicable was the Limitation Act, 1939, but it was necessary to consider previous Acts (Act of 1623; Real Property Limitation Acts, 1833 and 1874; Law of Property Amendment Act, 1860, s. 13; Intestates Estates Act, 1884, ss. 2 and 3; Trustee Act, 1888, s. 8; Law of Property (Amendment) Act, 1924, s. 10 and Sched. X; Administration of Estates Act, 1925, ss. 30, 46, 56, Sched. II, Pt. I). The position immediately before the 1925 legislation was as follows: (*a*) on a claim by an unpaid next-of-kin under an intestacy against personal representatives, the period was twenty years from the accrual of a present right to receive the share claimed by some person capable of giving a discharge; (*b*) on such a claim direct in equity against a third party wrongly paid, no statute had direct application, and the six years of the Statute of James was applied on the analogy of an action for money had and received (*In re Blake* [1932] 1 Ch. 54). After 1925 and before the Act of 1939 the position was substantially the same. Section 20 of the Act of 1939 prescribed a limitation period of twelve years for an action "in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy . . . from the date on which the right to recover the share or interest accrued," and a period of six years in respect of an action to recover arrears of interest on a legacy or damages in lieu. This section plainly applied to an action against an executor, and the court could not see why it did not apply equally to an equitable action against a

wrongly paid beneficiary, which was fairly described as an action " in respect of " a claim to the personal estate of a deceased person. If this view was wrong, no section of the Act applied directly, and it had been contended for the respondents that the effect of s. 2 (1) (*a*) and (7) was to preserve the six-year rule referred to in *In re Blake* (*supra*); but assuming that s. 2 did apply by analogy, it was made by s. 1 subject to Pt. II, including s. 26, which provided that where the action was " for relief from the consequences of a mistake " the period " should not begin to run until the plaintiff had . . . or could with reasonable diligence have discovered " the mistake. If, therefore, s. 2 should apply, an inquiry must be directed to ascertain when the various beneficiaries discovered or ought to have discovered the mistake, and the result would probably leave the respondents no better off. The court would hold, however, that s. 20, with the twelve-year limitation, applied.

(4) EQUITABLE CLAIM *in rem*. The decisions already made were sufficient to dispose of the matter, apart from the question of interest, but in deference to the judgment below and arguments, and in view of possible further proceedings, the equitable claim *in rem*, based on *Sinclair* v. *Brougham* (*infra*), would be considered. Where the appellants could make good a claim *in rem*, together with a claim for interest (which was not applicable to the claims *in personam*), they could recover on such claim together with interest, and recover the balance of principal on the personal claim. *Sinclair* v. *Brougham* [1914] A.C. 398, was of fundamental importance, and did not so much extend as explain *Hallett's Case* (1880), 13 Ch. D. 696. Common law approached the matter in a materialistic way, and could only treat money as identifiable so long as it was not mixed with other money, but would treat as identifiable acquired property on the basis that the claimant could ratify such a purchase. These distinctions between common law and equity should be noted: (*a*) common law did not recognise equitable claims to property; (*b*) it possessed only limited remedies; (*c*) the combination of (*a*) and (*b*) prevented common law from identifying money in a mixed fund; whereas equity adopted a more metaphysical approach, and would regard an amalgam of moneys as capable of being resolved.

The equitable form of relief, whether in the form of an order to restore an unmixed sum, or a declaration of charge upon a mixed fund, was personal, in that the rules of equity acted on the individual, but was only enforceable if the money existed as a separate fund, a mixed fund, or as acquired property; money spent on dinner was not recoverable. Further, " money " must be regarded notionally, as comprising cheques and bank balances. The first question for decision was whether the power to recover Diplock " money " ceased at the moment when the " money " by the process of mixture became an accretion to a respondent's bank balance; the court below had so decided, but it appeared that this was contrary to the principles of *Sinclair* v. *Brougham*, *supra*, in which Lord Parker's reasoning led to the proposition that where an innocent volunteer mixed " money " of his own with the " money " of another, although the other could not claim a charge on the mass superior to the claim of the volunteer, yet he was entitled to a charge ranking *pari passu*. Applying this reasoning, it was wrong to hold, as had been held below, that the principle in *Hallett's* case, *supra*, only came into operation when the person who did the mixing was not only in a fiduciary position but also a party in the tracing action. In *Sinclair* v. *Brougham*, *supra*, the contest between the shareholders and depositors of a building society related to a miscellaneous mass of assets in a winding-up, the assets having been used in a banking business carried on *ultra vires*. The House of Lords held that the application of the equity underlying *Hallett's* case led to the conclusion that the fund was divisible rateably between both classes. The true principle which emerged was, as stated by Lord Parker, that equity may operate on the conscience not merely of those who acquire a legal title in breach of trust, but of volunteers, provided that some equitable interest attaches to the property in the hands of the volunteer. The case resolved itself into one where the fund consisted of a mixed fund in the hands of X (the society), traceable to moneys partly of X and partly of Y (the depositors) to which X had no equitable title but which Z (the directors) improperly mixed with the moneys of X. On this basis, the right of the depositors rested on their equitable interest asserted not against the directors (who were not parties) as fiduciary agents or trustees, but against the society (or its liquidator) as a volunteer into whose hands the money of the depositors had come mixed with the society's own money. Lord Parker had held that a third party, into whose hands the money had come without notice from a fiduciary agent, should have no priority over the equitable owner of the money misapplied. The conclusion to be drawn from his speech was that a volunteer who took without notice by way of a gift from a fiduciary agent, if there was no mixing, held the money on behalf of the equitable owner; if the volunteer mixed the money with his own, or had received it mixed from the agent, he must admit the claim of the true owner, but might set up his own claim to the moneys of his own in the mixture. (The court then proceeded to an analysis of the other speeches in *Sinclair* v. *Brougham*, and referred to *Banque Belge* v. *Hambrouch* [1921] 1 K.B. 321 and *In re Blake* [1932] 1 Ch. 54.) It was clear from the principles laid down in *Sinclair* v. *Brougham* that though equity would operate on the conscience of a volunteer, it would not operate on the conscience of a purchaser for value without notice (as had been decided below).

(5) APPLICATION OF THE JUDGMENT *in rem* TO THE SEVERAL DEFENDANTS. (*a*) Cases in which Diplock money had been used in the execution of works upon land or buildings already belonging to the charities. The claims against such defendants had been rightly dismissed below (except for one item of £5,000 which was still standing in a charity's special account at the date of the warning letter). The altered asset was a combination of land belonging to the charity and Diplock money. The money had disappeared. A new building in the middle of a hospital, without means of access, would be valueless on a sale. It would be wrong to charge the whole of the charity land in respect of such a detail. In the absence of authority, Diplock money so used could not be properly traced, and even if this were not so, the result would be inequitable. (*b*) (i) Where the charity had used the money to pay off a loan of £500, it was claimed that the judicial trustee was entitled by subrogation to stand in the shoes of the creditor, the loan not having been secured. As held below, the debt was extinguished, and would have to be revived. It was not unconscientious in the charity to resist this. (ii) The money was given and applied to pay off a secured bank loan. The case was not one of subrogation; the debt had been extinguished and would have to be revived. The now unencumbered property derived from a combination of the equity of redemption, contributed by the charity, and the Diplock money, which got rid of the incumbrance. The case was analagous to those in which Diplock money had been expended in improvements to charity lands. The claim must fail. (*c*) In the main action (against St. George's Hospital) the charity had notified the executors that the gift had been invested in the rebuilding fund. This was denied in the defence, and it appeared in fact that the money had been paid into a " Rebuilding Appeal Account " at the bank. In view of the decision regarding *Clayton's* case (1816), 1 Mar. 572, *infra*, there might be a case for inquiry. (*d*) The gift was paid into the charity's current account, but it had been withdrawn and deposited in the Post Office Savings Bank. Equity could not disregard this; a volunteer could not only mix, but unmix; the appellants' claim would succeed, and *Clayton's* case did not apply. (*e*) The charity had paid the gift into its current account and ten days after had expended a large sum on an investment. On an examination of the account it appeared that if *Clayton's* case were to be applied the appellants would have a charge on the investment for the amount of the gift. In the opinion of the court, *Clayton's* case did apply; it had been applied in the case of two beneficiaries whose trust money had been paid into a mixed banking account (see *per* Fry, J., in *Hallett's* case, *supra*, and *In re Stenning* [1895] 2 Ch. 433). (*f*) A charity promptly expended its gift on 3½ per cent. War Stock, after paying it into the bank. The charity already owned a block of this stock, which was not identifiable as such, being only certified and inscribed. Later further purchases were made and certain sales effected. One sale, made after the receipt of the warning letter, must be regarded as referable solely to the charity's own interest (according to the appellants), while the remainder should be dealt with on the analogy of *Clayton's* case. But such a rule should not be extended beyond the case of a banking account. The only equitable way of treating the transactions was to regard the sales as having been made rateably in the proportions applicable to the two conflicting interests.

(6) IN GENERAL. *Prima facie*, and subject to further argument, the sums recovered from the executors ought to be credited rateably to all the charities in respect both of claims *in rem* and *in personam*. There would be orders for the payment to the judicial trustee of the full sum claimed, less such rateable proportion in each case, without interest. In cases where the appellants had succeeded also *in rem* they were entitled to sums representing the interest actually earned by the investments into which the money had been traced. The precise form of the

orders would be a matter for argument at a later date, after the parties had had time for considering the judgment.

APPEARANCES: *Pascoe Hayward*, K.C., *J. A. Arnold*, *J. Monckton*, *Pennycuick*, K.C., *Neville Gray*, K.C., *Dunbar*, *Goff*, *J. H. Stamp*, *Danckwerts*, *Gerald Upjohn*, K.C., *J. F. Bowyer*, *Cockle*, *D. H. McMullen*, (*White & Leonard*; *Thomas Eggar & Son*; *Eland*, *Nettleship and Butt*; *Peake & Co.*; *Freshfields*; *Trollope and Winckworth*; *Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

THEFT FROM HOTEL BEDROOM

Olley *v.* Marlborough Court, Ltd.

Oliver, J. 5th May, 1948

Action.

The plaintiff was a guest at the defendant's hotel. On leaving her room one morning she locked the door and hung the key on the key-board behind the reception desk as she went out. On her return in the afternoon, she found that property of hers, principally clothing, including furs and fur coats, had been stolen from her room. She now claimed their value. A notice in the bedrooms of the hotel stated "the proprietors will not hold themselves responsible for articles lost or stolen unless handed to the manageress for safe custody. Valuables should be deposited for safe custody in a sealed package and a receipt obtained."

OLIVER, J., having held the hotel not to be an inn, so that no question arose under the Innkeepers Act, said that the wording of the notice was ambiguous. As it was the defendants' document, it must be construed against them. The notice, read as a whole, only referred to valuable articles and had no reference to clothes. There was clear evidence of negligence by the defendants in leaving the key board in such a position that anyone coming in from the street had easy access to it. They should have kept the keys out of reach of any unauthorized person. The plaintiff was entitled to rely on the defendants' preventing the key from being improperly removed. Judgment for £329 2s.

APPEARANCES: *G. G. Baker* (*Gardiner and Co.*); *Quass* (*Hair and Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ACTION TO RECOVER FINES

Askey *v.* Golden Wine Co., Ltd., and Others

Denning, J. 14th May, 1948

Action.

The three personal defendants were the persons principally concerned with the defendant company in the manufacture of a substance described as a cocktail, but containing methylated spirit, and so unfit for human consumption. The plaintiff, a wholesaler, visited, at their factory, the three defendants who ran the company, and thereafter used to collect the substance in bottles from the factory and deliver it direct to retailers. He supplied the labels, which described the substance as cocktails and bore the name of his firm as the proprietors. The customs authorities discovered, *inter alia*, the contamination with methylated spirit. The three defendants and the company pleaded guilty, *inter alia*, to charges under the Food and Drugs Act, 1938, of possessing and selling wine to which methylated spirit had been added. Two of the defendants were fined and sentenced to imprisonment. The other defendant, one Oestreicher, was only fined, having only pleaded guilty to customs offences. The plaintiff thereafter continued his course of dealing with the company until, in 1945, he was convicted at various courts of summary jurisdiction under the Act of 1938 in respect of his sales of the cocktail mixture. He was convicted and fined, and, in consequence, all the mixture in the hands of retailers was returned to him and he had to refund purchase money totalling £1,736. The company being in liquidation, the plaintiff now sued two of the personal defendants for damages for breach of contract and fraud and conspiracy. (*Cur. adv. vult.*)

DENNING, J., said that, while the plaintiff was not a party to the conspiracy, he had failed to take steps to see that the liquid was fit for sale, and had continued, tempted by the large profits, to trade with the company after the convictions against the personal defendants. He could not recover the fines or costs or the damage to his trade resulting from his convictions. Punishment by a criminal court was personal to the offender, and the objects of punishment would be nullified if he could recover the amount of fines and costs from another by civil process. The necessity for refunding the £1,736 was also due to the plaintiff's criminal negligence. The money so paid was reparation for his own crime, and was irrecoverable. The principle in *Haseldine* v. *Hosken* [1933] 1 K.B. 822 and *Beresford* v. *Royal Insurance Co., Ltd.* [1938] A.C. 586 applied. Judgment for the defendants. No costs.

APPEARANCES: *F. Whitworth* (*Russell and Arnholz*); *L. Caplan* (*Kingsley, Napley & Co.*); *E. D. Smith* and *D. R. Davis* (*Leonard Tubbs & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on 13th July:—

AGRICULTURAL WAGES.
AGRICULTURE (SCOTLAND).
CROMER URBAN DISTRICT COUNCIL.
EMPLOYMENT AND TRAINING.
MERCHANT SHIPPING.
PUBLIC WORKS LOANS.
WARWICK CORPORATION.

HOUSE OF LORDS

Read Second Time:—

EXPORT GUARANTEES BILL [H.C.] [15th July.
LAYING OF DOCUMENTS BEFORE PARLIAMENT (INTERPRETATION) BILL [H.L.] [14th July.
NATIONAL SERVICE BILL [H.L.] [13th July.

Read Third Time:—

IPSWICH CORPORATION BILL [H.C.] [14th July.
MERTHYR TYDFIL CORPORATION BILL [H.C.] [14th July.
WHITE FISH AND HERRING INDUSTRIES BILL [H.C.] [15th July.

In Committee:—

GAS BILL [H.C.] [12th July.
MONOPOLY (INQUIRY AND CONTROL) BILL [H.C.] [13th July.
REPRESENTATION OF THE PEOPLE BILL [H.C.] [13th July.

HOUSE OF COMMONS

Read First Time:—

ISLE OF MAN (CUSTOMS) BILL [H.C.] [12th July.
To amend the law with respect to customs in the Isle of Man.

Read Second Time:—

AGRICULTURAL HOLDINGS BILL [H.L.] [16th July.
STATUTE LAW REVISION BILL [H.L.] [16th July.

Read Third Time:—

BRIGHTON CORPORATION BILL [H.L.] [16th July.
BRITISH TRANSPORT COMMISSION ORDER CONFIRMATION BILL [H.C.] [16th July.
To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the British Transport Commission.
COVENTRY CORPORATION BILL [H.L.] [15th July.
DEVELOPMENT OF INVENTIONS BILL [H.L.] [16th July.
SALFORD CORPORATION BILL [H.L.] [15th July.

In Committee:—

BRITISH NATIONALITY BILL [H.L.] [13th July.

QUESTIONS TO MINISTERS

HIRE PURCHASE CARS (REGISTRATION)

Mr. ASTERLEY JONES asked the Minister of Transport whether, in view of the observations of Scott, L.J., in the Court of Appeal, on 1st July (92 SOL. J. 382), he will reconsider his decision not to permit the entry in the registration book of a motor vehicle of the interest of the owner when the vehicle is subject to a hire-purchase agreement.

Mr. BARNES: I cannot say until I have seen a full report of the case, but this will be studied as soon as it is available.

Mr. JONES: Will my right hon. friend receive evidence from hon. members about the cases of hardship which the present state of the law has caused?

Mr. BARNES: Certainly, any evidence that will facilitate a study of this matter will be welcomed. It is being, and has been, very carefully studied. [12th July.

LAW STUDENTS (AWARDS)

Mr. K. LINDSAY asked the Minister of Labour on what basis awards are made to law students by his department; why the amount is £23 a year less than for law students attending universities where awards are made by the Ministry of Education, and whether he will now take steps to remedy this anomaly.

Mr. ISAACS: The awards made by the Ministry of Labour and National Service under the Further Education and Training Scheme to law students are in respect of professional training in a principal's office, and are calculated on the same basis as all other awards made by the Ministry of Labour. Awards made by the Ministry of Education are larger because they are calculated in relation to university costs. I see no reason for altering these arrangements. [13th July.

COMPENSATION FOR LOSS OF DEVELOPMENT RIGHTS

THE MINISTER OF TOWN AND COUNTRY PLANNING, in answer to Mr. ERROLL, said that the claim form (Form S.1) for compensation for loss of development rights under the Town and Country Planning Act, 1947, may, except in the London County Council area, be obtained from the office of any county council or borough, urban district or rural district council. In the London County Council area it may be obtained from County Hall, or, in the City of London, from the Town Clerk's Office. It is also available at the various offices of the Central Land Board. [13th July.

SOLICITORS AMENDMENT (SCOTLAND) BILL

LORD MORRISON, in reply to a question by LORD CLYDESMUIR, said that the Government were in sympathy with the main provisions of the Solicitors Amendment (Scotland) Bill, and hoped that it might be possible to make progress with its proposals when a suitable legislative opportunity offered. [13th July.

STATUTORY INSTRUMENTS

In a written reply to Sir JOHN MELLOR, the FINANCIAL SECRETARY TO THE TREASURY stated that 264 Statutory Instruments had been published by the Stationery Office during the last thirty days. [15th July.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 1592. **Companies** (Stock Exchange) Order, 1948. July 8.
No. 1597. **Courts Emergency Powers** (Isle of Man) (Revocation) Order, 1948. July 9.
No. 1582. **Extinguishment** or Modification of Easements Regulations, 1948. July 6.
No. 1591. **Safeguarding of Industries** (Exemption) (No. 6) Order, 1948. July 9.
No. 1461. **Town and Country Planning** (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948. June 30.
No. 1521. Town and Country Planning (Minerals) Regulations, 1948. May 13.
No. 1585. **Transferred Undertakings** (Pensions of Employees losing Employment) Regulations, 1948. July 7.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The King has approved a recommendation of the Home Secretary that Mr. P. G. D. SIXSMITH be appointed Stipendiary Magistrate of Cardiff in succession to the late Mr. G. V. H. Parsons. Mr. Sixsmith was called by the Inner Temple in 1936.

The Board of Inland Revenue have appointed Mr. F. H. PEAKE to be Controller of Death Duties in succession to Sir Reginald K. Rowell, who is retiring from the public service from 1st August, 1948. Mr. Peake, who entered the Inland Revenue Department on 6th April, 1909, was called to the Bar by Lincoln's Inn in 1915.

Mr. E. A. BOOTHROYD has been appointed Solicitor to the Docks and Inland Waterways Executive. He was admitted in 1934.

Mr. R. LUNN, Assistant Solicitor to Poole Corporation, has been appointed Clerk of Frimley and Camberley Urban Council, Surrey. He was admitted in 1933.

Notes

At The Law Society's Intermediate Examination, held on 24th and 25th June, 1948, 75 candidates out of 104 passed the legal portion and 25 candidates out of 42 passed the trust accounts and book-keeping portion.

THE COURT OF APPEAL

Commencing on the 27th September next, and until the end of the Long Vacation, two divisions of the Court of Appeal will sit and take the following business: appeals from the Probate and Divorce Division, county court appeals and some interlocutory appeals from all divisions.

ADVERTISEMENTS UNDER THE TRUSTEE ACT, 1925, s. 27

The Lord Chancellor's Office, in consultation with The Law Society, has arranged with the editors of *The Times*, the *Daily Telegraph* and the *Manchester Guardian* that on and after 1st September, 1948, advertisements by personal representatives under s. 27 of the Trustee Act, 1925, will be inserted in the form of a schedule under a common heading. The new form will result in the saving of space and of expense to personal representatives by avoiding the repetition in each advertisement of formal words.

The heading under which these advertisements will appear is as follows:—

"Notice is hereby given pursuant to s. 27 of the Trustee Act, 1925, that all persons having claims against the estate of any of the deceased persons whose names, addresses and descriptions are set out below are hereby required to send particulars in writing of their claims to the person or persons mentioned in relation to the deceased person concerned before the date specified, after which date the estate of that person will be distributed by the personal representatives among the persons entitled thereto having regard only to the claims of which particulars have been so given:—"

The following are examples of the way in which advertisements should be submitted in all cases in which publication is to take place after the specified date:—

ROSEMARY LESLEY JOHNSON, 14 Park Road, Sale, Manchester, died 13th September, 1948; particulars to Smith, Jones & Tankerton, Solicitors, 21 Hobart Place, London, W.1, before December 31st, 1948.

RAYMOND DANIEL DOBSON, Red Farm, Sandy Lane, Bicknoller, Somerset, died 26th September, 1948; particulars to Knowles & Crayson, Solicitors, 22 Johnson Road, Taunton, Somerset, before the 31st December, 1948.

It is hoped that all solicitors and others responsible for the entry of advertisements under s. 27 of the Trustee Act, 1925, will ensure that they adhere as nearly as possible to the form of words of which the above are examples; otherwise the editor of the newspaper concerned will be obliged to return the advertisements for re-wording.

COURT PAPERS

SUPREME COURT OF JUDICATURE

TRINITY SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE

CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey	Mr. Justice Roxburgh
			Witness	*Non-Witness*
Mon., July 26	Mr. Reader	Mr. Andrews	Mr. Andrews	Mr. Blaker
Tues., ,, 27	Hay	Jones	Jones	Andrews
Wed., ,, 28	Farr	Reader	Reader	Jones
Thurs., ,, 29	Blaker	Hay	Hay	Reader
Fri., ,, 30	Andrews	Farr	Farr	Hay
Sat., ,, 31	Jones	Blaker	Blaker	Farr

Date	Group A Mr. Justice Wynn Parry *Business as listed*	Mr. Justice Romer *Business as listed*	Group B Mr. Justice Jenkins *Witness*	Mr. Justice Harman *Non-Witness*
Mon., July 26	Mr. Jones	Mr. Farr	Mr. Reader	Mr. Hay
Tues., ,, 27	Reader	Blaker	Hay	Farr
Wed., ,, 28	Hay	Andrews	Farr	Blaker
Thurs., ,, 29	Farr	Jones	Blaker	Andrews
Fri., ,, 30	Blaker	Reader	Andrews	Jones
Sat., ,, 31	Andrews	Hay	Jones	Reader

The LONG VACATION will commence on Sunday, the 1st day of August, 1948, and terminate on Monday, the 11th day of October, 1948, both days inclusive.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).